Sustainable management in policy and practice

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Sustainable management in policy and practice – the placing of solar panels on listed buildings in Scotland

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Abstract

Historic Environment Scotland observes that 'the challenge for sustainable management of the historic environment and how it contributes to the vitality of modern life, is to identify its key characteristics and to establish the boundaries within which change can continue so that it enhances rather than diminishes historic character.' This paper critically examines how the current system for managing change in listed buildings in Scotland is dealing with micro-renewables in practice. It reports the findings of a case study of eight local authorities and highlights examples of good policy and practice operating under the existing legal and financial framework that could be more widely implemented.

Sustainable management in policy and practice – the placing of solar panels on listed buildings in Scotland

Introduction

'The difficulty is that everyone is in principle in favour of preserving the best bits of the built heritage; but they do seem to get in the way of decent modern development.'[1]

The Scottish Government is resolute that Scotland become a leader in mitigating climate change and in promoting renewable energy. [2] Under the Climate Change (Scotland) Act 2009, Scotland already has some of the most demanding greenhouse gas reduction targets in the world.[3] Scotland's Draft Climate Change Plan for 2017-2032 steps up the commitment even further. Among other things, it provides that by 2030 Scotland's electricity system will be wholly decarbonised and supply a growing share of Scotland's energy needs and that Scotland's building stock will be largely decarbonised by 2032.[4]

To date, to meet its commitments, Scotland has targeted 'the low hanging fruit' that offer win-win benefits such as reduced energy costs and reduced energy use. A key focus has been on promoting energy efficiency measures such as insulation. The UK and Scottish Government have also introduced measures to encourage owners to consider micro-renewables including the introduction of permitted development rights to speed up the approval process for some buildings and payments for energy generated and exported to the grid.[5]

There has been progress but it has been limited. For example, of Scotland's 2.4 million buildings only 45,000 homes and a 1000 commercial properties have roof-top solar panels.[6] However, for

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*Author details and acknowledgements to follow.

[1] C. Mynors 'Working with the heritage: the new rules' [2006] JPL Dec Supp (Planning: The Changing Climate) 22.

[2] Scottish Government *Economic Strategy*, 2015

[3] Climate Change (Scotland) Act 2009 aims to reduce emissions of greenhouse gases (GHGs) by at least 80% in 2050 relative to 1990, with an interim target to reduce emissions by 42% in 2020; Committee on Climate Change, Reducing Emissions in Scotland – Progress Report 2016 (September 2016) at 8.

[4] Scottish Government Draft Climate Change Plan - the draft Third Report on Policies and Proposals 2017-2032 http://www.gov.scot/Resource/0051/00513102.pdf

[5] See below at.4 and 8.

[6] Solar Trade Association 'STA Scotland: key facts and statistics' (2016) http://www.solar-trade.org.uk/wp-content/uploads/2016/03/Key-facts-and-statistics-Solar-in-Scotland-v8.pdf See also Department for Business, Energy and Industrial Strategy 'Feed in tariff Statistics'

many buildings micro-renewables are still not supported. For example, strict rules exist to preserve the historic, architectural and cultural benefits certain buildings provide free from modern alterations. To meet the new targets, the implementation strategy will need to cover more of Scotland's built environment including buildings of special architectural or historic interest ('listed buildings').[7] At present, there is a strong legal presumption in favour of the preservation of listed buildings[8] and any push for micro-renewables will require a careful balancing.

This is not an impossible task. As set out in UNESCO's Good Practice Guide 'Contrary to popular belief, it is possible to reduce energy inefficiency in traditional buildings, without compromising their authenticity'[9] Indeed, microgeneration technologies such as solar panels could make older buildings more economical to run, comfortable to live in, environmentally responsible and, as a result, less likely to fall into disrepair or be demolished. In line with much of the literature, this paper refers to this balancing process as 'the sustainable management of listed buildings'. As explained by Historic Environment Scotland ('HES') 'the challenge for sustainable management of the historic environment and how it contributes to the vitality of modern life, is to identify its key characteristics and to establish the boundaries within which change can continue so that it enhances rather than diminishes historic character.'[10] HES is the non-departmental public body responsible for listing, protecting, preserving and managing these buildings in Scotland.[11]

This paper critically examines how the current system for managing change in listed buildings in Scotland is dealing with micro-renewables in practice. It reports the findings of a case study of eight local authorities and highlights examples of good policy and practice operating under the existing legal and financial framework that could be more widely implemented.

This project contributes to the existing literature in three respects. First, there is very little research comparing current national policy on managing change in the listed buildings with local policy as set out in development plans. Second, no empirical work has been conducted on how

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562991/FiT_LA_Domestic_Installations_Q3_2016_with_London.pdf

[7] Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ('LBCASA 1997') s.1(4).

[8] LBCASA s.14(2), s.59.

[9] UNESCO, RENFORUS 'Good Practices: Success stories on sustainable and renewable energies in UNESCO sites'

[10] Historic Environment Scotland, *Historic Environment Scotland Policy Statement* (HESPS) (2016), para 1.3.

[11] LBCASA 1997 s. 1(4).

applications relating to managing change in listed buildings in Scotland are decided and what factors are influential in those decisions. This type of evidence is essential to fully understand the role and influence of national and local policy in what is essentially a local decision making process. Finally, the results of this project provide evidence about whether the parameters set in the legislation on managing change in listed buildings continue to be relevant in a modern context. There may well be a case for reform to the regulatory regime for listed buildings and, likewise, for extending the availability of the financial incentives for renewable energy. However, the focus here is on effectively delivering sustainable management within existing framework and as such these options are not considered in detail.

The law on managing change in listed buildings

The Planning (Listed Buildings and Conservation Areas) Act 1997 ('LBCASA 1997') section 1(1) places a duty on HES[12] to compile a list, upon the guidance of planning authorities, of buildings of special architectural or historic interest.[13] In Scotland and the rest of the UK, these buildings are known as 'listed buildings'. In deciding whether or not to list a building, HES is required to consider only the special or architectural interest of the building[14] and issues such as current condition, future use or financial issues are not relevant in considering whether a building should be listed.[15]

Older buildings are the most likely be listed. Of Scotland's 2.4 million buildings, 455,000 (or 19%) were built prior to 1919; 40% were built before 1945 and 86% are over 20 years old[16] and approximately 47,430 are listed.[17]

The law on listed buildings is focused on preservation. Listed buildings, like other buildings, are subject to planning legislation, but have additional provisions that explicitly prioritise the preservation of their features of special architectural or historic interest. The Town and Country

[12] Previously the responsibility lay with an arm of the Scottish Government – 'Historic Scotland' and some policies continue to be under the old name.
[13] LBCASA s.1(4).
[14] Historic Scotland, *A Review of Existing Information for Scotland's Historic Environment Audit* (2005), para 45. In a 2005 audit, 65% of buildings listed are are assessed as being in a poor, very poor or ruinous condition.
[15] LBCASA 1997 s.1(1); HES n.10, para 2.24.
[16] Scottish Government, *Scottish House Condition Survey: Key Findings 2014*, (National Statistics, 2015) < http://www.gov.scot/Publications/2015/12/8460
[17] Historic Scotland, *Short Guide – Micro-renewables in the Historic Environment* (2014) at 4.

Planning (Scotland) Act 1997 ('TCPSA 1997') in section 28(1) requires planning permission from the local authority[18] (known as the planning authority) for any development of the land. Development encompasses any 'building, engineering, mining or other operations in, on, over or under land.'[19] Generally, works to the interior of the building that have no effect on the exterior[20] do not require planning permission. The same is true of minor projects including some microgeneration projects falling under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 ('GPDO Scotland 1992'), which automatically receive permission. For listed buildings the position is different.

Any works to the interior or exterior of listed buildings which may affect their special architectural or historic interest are not permitted.[21] Consequently, any development requires specific authorisation from the planning authority, called a listed building consent ('LBC').[22]

The power to issue LBCs for development on listed buildings remains with the local authority,[23] along with all the enforcement powers.[24] The authority must consult HES where the application is submitted by the authority itself or is for the demolition of a listed building or for works to a Category A or B listed building.[25] If the authority wishes to grant LBC contrary to the advice of HES the authority must notify the Scottish Ministers of that intention. This gives the Scottish Ministers the opportunity to consider calling in the application to decide themselves. There is a right to appeal a refusal of LBC or the imposition of certain conditions to the Scottish Ministers.[26]

In determining LBCs and planning applications ss. 14(2) and 59 of LBCASA 1997, respectively, place duties on the planning authority and the Scottish Ministers to have 'special regard to the desirability of preserving a listed building, or its setting, or any features of special architectural or historic interest which it possesses.' Identical wording is used in the listed buildings

[18] The Scottish Ministers or Secretary of State (in England) may call in applications and hear appeals.
[19] TCPSA 1997, s.26(1).
[20] ibid, s.26(2)(a).
[21] LBCASA 1997, s.6.
[22] ibid, s.7. Even for works on a roof that is only visible from the air, *Burroughs Day v Briston City Council* [1996] EGCS 10.
[23] ibid, s.9(1).
[24] ibid, ss.34 - 41.
[25] Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015, reg 7.
[26] Ibid s.18.

legislation across the UK.[27] The legislation defines 'preserving' to mean 'preserving [a listed building] either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character'.[28] The words 'special regard' denote the importance of this consideration for planning authorities and HES. The case law in both Scotland and England supports a strong presumption against changes to listed buildings or their settings holding that the duty to preserve is different from 'mere' material considerations and its weight cannot be varied in the same way as normal planning applications.[29] Indeed, 'preserving' in this context means doing no harm[30] and a balancing exercise is not enough to satisfy the duty.[31] Any harm, even if limited or less than substantial, will be a considerable barrier to allowing development and alternative options should be considered. [32]

Sites protected under the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage ('World Heritage Convention') [33] and other international treaties[34] are managed in a similar way as the rest of the historic environment by HES. Where a building is protected under international treaties this adds a stronger presumption in favour of preservation. Nonetheless, 'it does not introduce a free-standing duty of itself';[35] it only adds strength to section 59.[36]

Very occasionally, the courts have allowed certain public interest factors as material considerations to override the harm to listed buildings and outweigh the presumption in favour of preservation including increased local employment opportunities and safety.[37] In the main

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[27] Listed Buildings and Conservation Areas Act 1990 s.16(2) and s. 66(1) (covers England and Wales but note amendments from Historic Environment (Wales) Act 2016); Planning Act (Northern Ireland) 2011 s.91(2).
[28] LBCASA 1997 s.14(3).
[29] *R (on the application of Garner) v Elmbridge BC* [2011] EWHC 86 (Admin)*;* at [8], upheld on appeal [2011] EWCA 891 (Ouseley J)
[30] *South Lakeland DC v Secretary of State for the Environment* [1992] 2 AC 141.
[31] *R (Forge Field Society and others) v Sevenoaks DC* [2014] EWHC (Admin) [55] (Lindblom J.)
[32] See *Forest of Dean DC v Secretary of State for Communities and Local Government* [2016] EWHC 421 (Admin); *R (on the application of Barnwell Manor Wind Energy Ltd) v East Northamptonshire DC* ('*Barnwell*') [2014] EWCA Civ 137 .
[33] Adopted 16 November 1972.
[34] European Convention on the Protection of the Archaeological Heritage 1992, The Granada Convention for the Protection of the Architectural Heritage of Europe 1985 and European Cultural Convention Paris 1954, harmonising preservation efforts across all EU Member States..
[35] Mynors, n 1, 43.
[36] *Bath Society v Secretary of State* [1991] 2 PLR 51 per Stocker LJ at [66] 'the duty […] is of particular importance where the site concerned is of such universal value that protecting it is the concern of all mankind'.
[37] *South Lakeland DC v Secretary of State for the Environment* [1992] 2 AC 141; *R (on the application of Barnwell Manor Wind Energy Ltd) v East Northamptonshire DC* ('*Barnwell*') [2014] EWCA Civ 137; *R (on the application of Chilton) v Babergh DC* [2014] EWHC 3261 (Admin); *Glasgow District Council v SoS for Scotland* 1993 SLT 1332..

however, the current law on its own fails to provide any consistent mechanism for balancing the preservation of historic buildings with the need to modernise existing buildings.[38]

Why reducing the energy use in listed buildings is important

The reality is that older buildings are high consumers of energy as energy efficiency measures were unlikely to have been considered in the design or the building stage. [39] Indeed under the UK's 'standard assessment procedure' ('SAP') which assesses the energy performance of buildings out of 100 (where a higher number indicates a lower running cost) it was found that over 40% of properties built pre-1919 have a rating of less than 41 while 60% of properties built since 1990 have SAP ratings greater than 70. [40]

Thus listed buildings are a considerable part of the built environment and yet due to their age are least likely to be energy efficient and are expensive to run and this increases their risk of falling into disrepair or being demolished.

For owners of listed buildings, finding ways of reducing energy costs and making their buildings capable of comfortable and appropriate active use is essential. As HES explains: 'listed buildings will like other buildings, require alteration and adaptation from time to time if they are to remain in beneficial use, and will be at risk if such alteration and adaptation is unduly constrained.'[41]

Often the least intrusive and most cost effective means of improving the energy efficiency of any building is to make small changes to reduce the energy consumption of the building rather than change how it gets that energy. Scottish Government policy on both climate change and renewable energy and on managing change in the historic environment advocates making efficiency changes such as draught proofing as the preferred first step in reducing energy costs.[42]

However, as noted by HES many historic buildings and sites lend themselves well to some form

[38] For a discussion possible legal reforms see A. Ross and A. Zasinaite 'The use of presumptions and duties in sustainable development equations: promoting micro-renewables and preserving historic buildings' *Environmental Law Review* (forthcoming)
[39] P. Ekins and E. Lees, 'The Impact of EU Policies on Energy Use in and the Evolution of the UK Built Environment' (2008) 36 *Energy Policy* 4580, 4580.
[40] S. Roberts, 'Altering Existing Buildings in the UK' (2008) 36 *Energy Policy* 4482, 4483.
[41] HES , n.10 para 3.39.
[42] Historic Scotland, *Managing Change in the Historic Environment: Micro-renewables* (HES 2016) 5-6.

of micro-renewable energy generation.[43] Indeed, appropriately placed micro-renewables projects including solar panels, have the potential to contribute significantly to enhancing, preserving and securing a future for valued historic buildings while at the same time improving the state of Scotland's existing built heritage and its environmental credentials.

'Micro-renewables' (or microgeneration) are small-scale non-commercial renewables using zero or low-carbon technologies to provide heat, hot water and/or electricity'[44] and include small scale wind, hydro-electric, solar, geothermal and biomass technologies. Renewables also can reduce energy consumption in buildings, and for example, 'solar technologies can bring about significant reductions in building lighting and space/water heating demands, respectively, reshaping the demand.'[45] This is not only beneficial in reducing demand on the public energy infrastructure, but it can bring potential savings to owners and occupiers as they pay less for energy because they have their own renewable supply. For example, photovoltaic solar panels or encased wind turbines may provide much of a building's electricity and it is only when the renewable resource is unavailable that the public electricity supply is accessed. Conversely, any surplus energy generated can be exported to the grid. Such initiatives and these have been shown to reduce a building's consumption of conventionally generated electricity by up to 90%.'[46]

The high initial costs of microgeneration can impede its adoption in practice.[47] As indicated earlier, financial incentives exist which provide payment for energy generated and exported to the grid. However, the rules governing the payment for energy generated and exported to the grid from small scale renewable or low carbon technologies (known as the feed in tariff or FIT) provide that only buildings with an Energy Performance rating of D or above prior to the

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[43] Ibid 4.
[44] Energy Act 2004, s.82(6). Renewable energy defined as 'energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases.' Per 2009/28/EC Directive on the promotion of the use of energy from renewable sources, Art.2(a).
[45] J. Clarke et al., 'The Role of Built Environment Energy Efficiency in a Sustainable UK Energy Economy' (2008) 36 Energy Policy 4605, 4607.
[46] F.J. Born et al. 'On the integration of renewable energy systems within the built environment' (2001) 22(1) Building Services Engineering Research and Technology 3.
[47] Energy Savings Trust ' Microgeneration Industry Workshop Feedback' June 2015 http://www.energysavingtrust.org.uk/sites/default/files/reports/Microgeneration%20workshop%20feedback%20report%20June%202015.pdf .

installation of the solar PV panels qualify for the standard rate FIT.[48] The objective is to ensure owners tackle energy efficiency first before installing solar panels. However, for many older buildings changing to energy efficient lightbulbs, additional insulation and a new boiler may still not get the building to a D rating. The result is that a significant financial benefit of installing solar panels is not available to those whose buildings do not qualify. Yet, the fact that these energy efficiency changes may not significantly reduce the buildings' consumption of fossil fuels to a level that is sustainable (both environmentally and economically) is also a reason for finding more sustainable energy sources.

Thus, significant barriers exist within the current system that limit the capacity to reduce the consumption of fossil fuels in listed buildings and perhaps justifiably, in order to preserve our historic and architectural interests. As indicated earlier, legal and financial reforms are beyond the scope of this paper. That said, some opportunities do exist and the additional consent processes and costs may be more worthwhile for those faced with the high costs of running an inefficient older and possibly, listed building.[49] The focus of this project is to see what can be achieved within the existing parameters.

Methodology

Eight of Scotland's unitary local authorities (the planning authorities for their areas) were chosen for this study. They were selected, firstly, on the basis of the capacity of their online advanced search tools to conduct the necessary search. For example, some authorities' search engines do not allow searches of just listed building consents. It was also important to ensure the authorities represented both urban and rural areas, including the four major cities and Edinburgh as a World Heritage Site as well as covering the country geographically. The timeframe of January 1, 2011 to November 11, 2016 was chosen for two reasons. First, it was only after the passage of the Climate Change (Scotland) Act 2009 that Scotland had a statutory commitment to climate change and it is only after 2010 that policy linking historic buildings and climate change mitigation had been produced.

[48] Energy Savings Trust http://www.energysavingtrust.org.uk/home-energy-efficiency/energy-performance-certificates
[49] Roberts, n.40.

The first stage of this research was a review of the law relating to listed buildings as set out above. The second stage was a detailed, critical and comparative review of relevant Scottish Government and HES policy as well as the relevant policies contained in the development plans of eight studied planning authorities. The focus of the policy study was on micro-generation projects generally and solar panels specifically.

The final stage involved an empirical study to determine the number of LBC applications relating to solar panels that had been made during the study period in the eight selected authorities, the number of LBC granted, refused and withdrawn. This stage specifically, examined projects proposing solar panels due to the potentially significant visual impact. Then over sixty decisions were examined in detail to determine and compare the policies and processes that were influential in individual cases and authorities (and occasionally, the Scottish Government on appeal). [50]

The results of these final stages were then mapped onto the policy findings in stage two to reveal any correlations between policy content, processes, numbers of applications coming forward and final decisions.

National policy on microgeneration and listed buildings

Relevant national policy, from the Scottish Government and HES, is a material consideration in planning decisions including LBC applications. 'Material' is restricted to considerations for the use and development of land, relevant to the particular application.[51] The weight given to material considerations is at the discretion of the decision maker[52] and the decision will be upheld unless it was administratively unreasonable.[53] As noted earlier, the courts have held that the duty to 'have special regard' to the preservation of listed buildings and their settings has a higher status and cannot be easily overridden by other material considerations and this includes national policy.

[50] The detail on the selection process for these decisions is set out below with the findings.
[51] *Stringer v Minister of Housing & Local Government* [1971] 1 All ER 65.
[52] *City of Edinburgh Council v Secretary of State for Scotland and Revival Properties* 1997 SCLR 112 and *Tesco Stores Ltd v Secretary of State the Environment* [1995] 2 All ER 636 (HL).
[53] *Associated Provincial Picture Houses v Wednesbury Corp* [1948] 1 KB 223.

The Scottish Government's priorities for the operation of the planning system and for the development and use of land are set out in *Scottish Planning Policy* ('SPP').[54] The SPP contains some specific guidance on how to balance change to and preservation of historic places. Para 137 states that 'Change should be sensitively managed to avoid or minimise adverse impacts on the fabric and setting of the asset, and ensure that its special characteristics are protected, conserved or enhanced.' While para 141 emphasises that the preservation of the special architectural or historic interest of the building is the utmost important consideration, paragraph 142 provides that minimum development 'may be acceptable where it can be clearly shown to be the only means of preventing the loss of the asset and securing its long-term future.'

Overall, the SPP does not challenge the strict statutory presumption in favour of preservation found in the LBCASA 1997.[55]

More specific guidance for the day-to-day management of the historic environment can be found in the *Historic Environment Scotland Policy Statement* (HESPS).[56] The preservation of heritage assets is emphasised,[57] however, HESPS provides that 'sustainable management practices recognise that the protection and management of the historic environment is best carried out in balance with the surrounding environment, not in isolation from it.'[58]

The approach is made instrumental in HES' specific guidance on *Managing Change in the Historic Environment* including one on *Micro-renewables* (HESMG) and a *Short Guide – Micro-renewables in the Historic Environme*nt)[59] The HESMG promotes and supports the use of renewable energy as long as 'the character of the historic building or place can be protected through careful siting and design.'[60] This will be determined on an individual case basis.

The HESMG also acknowledges that many historic buildings lend themselves well to some form of micro-renewable energy generation. However, other energy efficiency measures such as draught proofing should be considered before micro-generation. It emphasises that micro-

[54] Scottish Government, Scottish Planning Policy (2014).
[55] ibid para 142.
[56] HES, n.10; See also its predecessor - Historic Scotland on behalf of Scottish Ministers, *Scottish Historic Environment Policy* (SHEP) (2011).
[57] ibid. para 1.9 b restates the presumption in favour of preservation.
[58] ibid paras 1.2 and 1.8
[59] Historic Scotland, n.42; Historic Scotland, n.17.
[60] Historic Scotland, n.42 at 4.

renewables should be planned carefully to minimize intervention affecting the historic character of the building while balancing the potential of available renewable energy sources[61] and offers detailed suggestions as to how to make different types of micro-renewables work for listed buildings. Specifically, in relation to solar power it suggests

> "Solar collectors can be installed on pitched or flat roofs, or may be integrated into the roof so that they are flush with its surface. …For the integrity of the building, it is usually desirable to mount panels over existing slates…. Installation of solar panels on the principal elevation of a historic building should be avoided because of the detrimental visual impact. … Alternative solutions should be explored, such as installation on secondary roof slopes, on locations hidden from main views, or on surrounding areas such as sheds, gardens or fields. Panels have been successfully installed behind parapet walls or on the south-facing inside rise of M-shaped roofs. …."[62]

This detailed guidance pushes the boundaries of the strong preservationist approach reflected in the law and the SPP and demonstrates an understanding by HES that Scotland needs all its buildings to be functional and energy efficient. It also offers owners and developers some clarity as to what types of projects are acceptable and what are not acceptable.

Local authority policy

Development plan policies are very influential in planning decisions. In dealing with applications for planning permission planning authorities must have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.[63] Moreover, section 25 of the TCPSA 1997 provides that where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise. This gives development plan policy a special status in Scottish planning law such that there is a presumption in favour of the development plan[64] and development plan policies must

[61] ibid, 4.
[62] ibid. 9.
[63] TCPSA 1997, s.37(2).
[64] *Edinburgh City Council v Secretary of State for Scotland*, 1998 SLT 120; but note also *Tesco Stores v Dundee City Council* [2012] UKSC 13 where development plan polices should not be read as if they are statutory provisions.

be explicitly identified, interpreted and considered against other material considerations in decision making. The same is true elsewhere in the UK.

In Scotland, the development plan includes the strategic plans for the four main cities and local development plans (LDPs) or local plans until these are replaced by LDPs as well as adopted supplemental guidance (SG). This study focused on LP/LDP and SG policy as these provide the most detailed guidance.

The review found that all of the studied development plans included specific policies on renewable energy and micro-generation. Generally, microgeneration policies support all types of renewable energy projects with the caveat that they do not cause significant harm/ unacceptable adverse impact to the local environment, including landscape character and the character and appearance of listed buildings and conservation areas.[65] By focusing on mainstream buildings and projects, the micro-renewables policies in development plans side step any need to balance the drive for renewables with the need to protect buildings of historic or architectural importance and their settings. As a result, these tend to be quite similar.

In contrast, the policy on managing change in listed buildings varies significantly between local authorities. Some LP /LDP policies on alterations to listed buildings are very negatively worded and strongly adhere to the presumption in favour of preservation. For example, in Aberdeenshire there is a presumption against development that would have a negative effect on the quality of these historic assets.[66] Moreover, in an SG, Aberdeenshire provides that 'we will refuse planning permission and/or listed building consent for any works, …, which would have a detrimental effect on [a listed building's] character, integrity or setting….We will only approve alterations or extensions to listed buildings or new development within their curtilage, subject to other policies, if: 1) they are of the highest quality, and respect the original structure in terms of setting, scale, design and materials; and 2) the proposed development is essential to securing

[65] Aberdeenshire Local Development Plan 2012, C2; Perth and Kinross Local Development Plan 2014 ER 1A; Dumfries and Galloway Plan Local Development Plan 2014, Policy IN1; Edinburgh Local Development Plan (second proposed June 2014) RS 1.
[66] Aberdeenshire Local Development Plan 2012, Policy 13.

the best viable use of the listed building without undermining its architectural or historic character, or its setting.'[67]

Other LDPs simply refer to national policy. In Aberdeen City, proposals affecting conservation areas or listed buildings will only be permitted if they comply with the SPP.[68] Elsewhere, the policy is even more vague. The Highland-wide Local Plan addresses development relating to the natural, built and cultural heritage together. It provides that 'all development proposals will be assessed taking into account the level of importance and type of heritage features, the form and scale of the development, and any impact on the feature and its setting, in the context of the policy framework detailed in an appendix.'[69] The SG sets out more specific aims but provides little practical advice. For example 'the management of the historic environment is to be based on considered judgement of how best to protect and enhance its importance and value. '[70]

None of the policy approaches above actually promote enhancement or change in listed buildings. In various ways, they discourage change and, arguably, this is consistent the presumption in favour of preservation and the SPP.

In contrast, the LDP for Perth and Kinross expressly promote active use and energy efficiency in listed buildings and provides that 'there is a presumption in favour of the retention and sympathetic restoration, correct maintenance and sensitive management of listed buildings to enable them to remain in active use, and any proposed alterations or adaptations to help sustain or enhance a building's beneficial use should not adversely affect its special interest. Encouragement will be given to proposals to improve the energy efficiency of listed buildings within Perth and Kinross, providing such improvements do not impact detrimentally on the special interest of the building.'[71]

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[67] Historic Environment 1 – Listed Buildings. Similar provisions are contained in the proposed Aberdeenshire Local Development Plan 2016 HE1.
[68] Aberdeen City Local Development Plan 2012, D5. Little more guidance is provided in Aberdeen City, Householder Development Guide SG
[69] Highland-wide Local Plan 2012, Policy 57.
[70] Highland Historic Environment Strategy 2013 see SA 6, SA 26, SA 30.
[71] Perth and Kinross Local Development Plan 2014, HE3.

Likewise, in Dundee City 'if your property is a listed building or is in a conservation area, the installation of micro-renewables may be possible, provided particular attention is paid to design and positioning.' [72]

Dumfries and Galloway LDP is also positive, stating that it will support development that makes effective, efficient and sustainable use of listed buildings. In considering development that impacts on the character or appearance of a listed building or its setting 'the Council will need to be satisfied that: proposals contribute to [the listed building] and do not seek to overwhelm or otherwise damage its original character and appearance; the layout, design, materials, scale, siting and the future use proposed are appropriate; and proposals for a change of use will not result in the/a loss of character or special architectural or historical features.'[73]

While positive, policy in Perth and Kinross, Dundee and Dumfries and Galloway do not provide owners and developers with specific details on what may and may not be acceptable. The HES policy is much more explicit in this regard as are the development plans in Glasgow and Edinburgh as described below.

The Glasgow City LP provides that 'the Council encourages the sensitive alteration and extension of listed buildings where this will not harm their special interest.[74] Specific details are then set out in a SG: 'As a general rule, modern exterior apparatus including, … solar panels, should not be located in such a manner or position that they would harm the character of a Listed Building or affect the visual amenity of the Conservation Area. Proposals for external fittings should comply with the following:

- Fittings should be sited to minimise their visual impact and to minimise any harm they may have on the character and appearance, and setting, of a Listed Building or Conservation Area.
- Fittings should not be seen from public view at street level.
- Fittings should not be affixed to the front elevation of a Listed Building or unlisted building in a Conservation Area.

[72] Dundee Local Development Plan; SG: Householder Development - Advice and Best Practice, undated para 3.8
[73] Dumfries and Galloway Plan Local Development Plan 2014, HE1
[74] Glasgow City Plan 2 2009, DES 3. Proposed Glasgow City Development Plan (submitted to SM June 2015) is similar.

- Where fittings are acceptable, they should be painted out or be manufactured in a colour to match the background to which they are attached and be fixed into mortar joints, as far as possible, to prevent damage to masonry or brickwork.[75]

Likewise, in Edinburgh policy is positive and prescriptive. Unsurprisingly, 'Development which would harm the qualities which justified the inscription of the Old and New Towns of Edinburgh as a World Heritage Site or would have a detrimental impact on the Site's setting will not be permitted.'[76] However, more generally the tone is positive: 'proposals to alter or extend a listed building will be permitted where those alterations or extensions are justified, will not cause any unnecessary damage to historic structures or diminish its interest and where any additions are in keeping with other parts of the building.'[77] Edinburgh's SG sets out very stringent and detailed guidance which provides that poorly located renewable energy technologies can be visually intrusive and will not be acceptable where they detract from the character of the building. They should not be visible from public view. They may be acceptable in the following locations:

- On the ground to the rear of the building.
- On a modern extension to the rear of the building, providing that no part is higher than the main building.
- In the internal valley of a roof, provided that no part projects above the ridge.
- In the New Town Conservation Area and World Heritage Site, aerial views will also be considered.[78]

This guidance provides owners and developers with a clear indication of what is not acceptable, what is acceptable and importantly, when it is worthwhile bringing forward an application.

Thus, in several authorities the policies acknowledge that change is possible in listed buildings and the law and policy create a case-by-case framework to ensure a careful and sensitive approach to their sustainable management.

[75] Development Guide DES 3, undated.
[76] City of Edinburgh Local Plan 2010, Env 1
[77] City of Edinburgh Local Plan 2010, Env 4. Note the Edinburgh Local Development Plan (second proposed June 2014) continues with very similar policies.
[78] City of Edinburgh Council Listed Buildings and Conservation Areas Supplemental Guidance, February 2016.

However, overall, the policy for managing change in listed buildings is sending mixed messages. The SPP largely reflects the current law which creates a presumption in favour of preservation and expressly excludes listed buildings from energy efficiency obligations.[79] In contrast, HES policy seems much more in touch with the reality of making older buildings work, acknowledges economic realities and gives flexibility to planning authorities to manage change intelligently. Likewise, inconsistencies also exist among the development plan policies in planning authorities. Some authorities' policies continue to reflect the negative stance of the law and the SPP and make overriding the presumption in favour of preservation very difficult. Others are much more positive about change but provide very little guidance as to what is or is not acceptable. Other policies allow certain projects but are very explicit about what is or is not likely to be permitted.

The use of the law and policy in practice

The law and the various policies mean planning authorities can approach decision making on micro-generation on listed buildings in several different ways. This section explores how planning authorities in practice reconcile the presumption in favour of preservation in the listed buildings legislation for LBC decisions on proposals involving solar panels.

The study is in two parts. An initial quantitative study was conducted online which searched the advanced search engines of the eight studied planning authorities to find all LBC applications for projects involving solar panels made during the study period.[80] The aim was to determine the number of LBC applications relating to solar panels coming forward, the number of LBC granted, refused and withdrawn and whether this was consistent across authorities. Solar panel applications were chosen due to their potentially significant impacts both visually and on the character of the buildings. Decisions on these applications were likely to involve some form of balancing of preservation and other aims and thus, would reveal where priorities lie in different authorities. Another aim was to determine if there is a link between different approaches and priorities set out in LDP policies as described above and higher or lower numbers of applications or success.

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[79] Scottish Government, n.54.

[80] These search engines are part of the wider ePlanning Scot which is a single shared service between the Scottish Government and the planning authorities that provides a way of submitting and viewing planning documents online. As of January 2016 74% of applications and appeals had been submitted through the portal. http://www.eplanning.scotland.gov.uk/eDevelopmentClient/

The search used the following search terms:

- Description Keyword solar, photovoltaic, photo-voltaic, PV, photo
- Application type listed building consent
- Decision date from 01/01/2011 to search date 11/11/2016

The reliance on the advanced search engines raises three caveats to the findings. First, the search engines themselves are only so reliable. They regularly go down and there are times when data will show up on a search and then disappear the next time the same search is conducted. Second, the search terms themselves are limited. The vast majority of applications are recorded with fairly detailed descriptions and it is safe to conclude that the keywords chosen have uncovered most of the relevant applications. However, there may be instances where for example, the panels are part of a larger project simply described as 'external alterations' and if this is the case, these applications will not have been picked up. Third, the study showed up variation in the online records in different authorities. A few authorities record very little for applications that are withdrawn. There was also variation in the way decisions that no LBC is required are recorded and it may be that these decisions are not recorded at all by some authorities. As a result of these three factors it is possible that the overall number of applications made is slightly higher than the number found in this study.

Table 1 below shows that in the eight authorities studied 135 relevant LBC applications were recorded online during the study period. Despite the factors described above, this figure is tiny given the fact that there are approximately 47,430 listed buildings across Scotland.[81]

Moreover, the overall figure hides significant variations between local authorities. Many of the applications are in the more rural councils of Aberdeenshire, Dumfries and Galloway, Highland and Perth and Kinross. Indeed, none of the Perth and Kinross applications are within the boundaries of Perth itself. Also, given their populations, the cities and, most noteably, Glasgow, Aberdeen and Dundee have received very few applications for LBC relating to solar panels. Indeed, there were only 2 private applications in Aberdeen City, and one was from the University; the rest being submitted by the authority itself.

[81] Historic Scotland, n.17 at 4.

Encouragingly, given the tension inherent in these projects, the overall success rate is positive at about 61.5%. This figure includes 78 cases where LBC was granted and a further 6 cases where it was explicitly held that LBC was not required. However, once again there is significant variation between authorities. Highland, Dundee and Glasgow have very high success rates. The chance of success in Edinburgh and Aberdeenshire is positive but not overwhelming. Dumfries and Galloway approve over half of all applications while in Perth and Kinross and Aberdeen City successful applications for LBC relating to solar panels are respectively rare and very rare.

Of the 22 refusals, 5 were subject to appeal to the Scottish Ministers and in only 2 cases was the decision relating to the solar panels overturned and LBC granted for the solar panels. Thus, it appears that authorities are not straying too far from the Scottish Government own approach to managing change in listed buildings.

Table 1

Local Authority	Total LBC	Grants	Refusals	W/d	Not Required	% success G + N/R	Appeal decisions
Aberdeen City	12	1	0	11 4 w/d twice		8.3	
Aberdeenshire	26	20	4	2		76.9	1 Refusal overturned on appeal
Dundee City	4	3	0	0	1	100	
Dumfries and Galoway	24	13	2	9		54	
Edinburgh	37	21	8	3	5	70.2	1 Refusal upheld 1 Refusal overturned
Glasgow	7	6		1		85.7	
Highland	11	10	1	0		91	
Perth and Kinross	14	3	7	4	0	21.4	2 Refusals upheld on appeal
Total	135	77	22	30	6	61.5	5

The above figures highlight potential differences between planning authorities in relation to choice of policy, priorities and decision-making processes. The second part of the study involved a more detailed review of a sample of LBC decisions to examine the reasons and processes behind authority decisions and the weight attached to national policy and / or local policy in

making individual decisions. For this part, all the refusals and withdrawals were examined along with a maximum of 5 grants of LBC from each authority. Most of the information was set out in the decision letters and handling reports for each application but other documents were examined where necessary. In total, 67 decisions were examined in detail. The findings are set out in Table 2 below.

Table 2

	Total decisions	Grants	Refusals	Withdrawn
Number	67	29	20	18
Refer to DP	46	25	19	2
Refer to SPP	21	10	10	1
Refer to HES policy	25	10	12	3
Policy blank	20	5	1	14
Conservation Officer consulted	35	17	14	4
Conservation Officer followed	31	13	14	4
Pre app consultation	15	7	7	1
Reasons: include character	24	11	12	1
Reasons: include visual	33	15	15	2
Reasons: missing detail	4	0	1	3
Reasons: LBC not needed	2	/	/	2
Reasons: blank	14	3	0	11
G with Solar Panel specific conditions	18	18	/	/
Appeal – solar panel part successful	2	/	2	/
Appeal – solar panel part unsuccessful	3	/	3	/

Overall across the eight authorities, the detailed review revealed some constants between authorities but many more variations.

In terms of the use of policy in decisions, the authorities with the most detailed and prescriptive development plan policies were most likely to rely entirely on these policies and did not tend to refer to the SPP or to either the general HES policy HESPS (SHEP) or its detailed policy on microgeneration (HESMG or the Short Guide). Of these, Edinburgh had a higher than average number of applications and a 50% chance of success while Glasgow attracted a lower than average number of applications but had a very high success rate.

In contrast, the authority whose development plan policy suggested little or no opportunities to overcome the presumption in favour of preservation, Aberdeenshire, still had a higher than average number of applications and a positive success rate. Its decisions almost always referred to the more permissive and detailed HES policy. The findings are less consistent for those authorities with positive but more vague development plan policy. Overall, these authorities referred to HES policy in about half of their decisions. In Perth and Kinross the chance of success was considerably higher when the authority referred to HES policy in its decision but this finding did not transpose to Dumfries and Galloway or Highland Councils.

Like the others directly above, Dundee City's development plan permits micro-renewables on listed buildings but provides no detail. Interestingly, all four of the applications in Dundee were successful (one did not require LBC) however, these decisions were based solely on DP policy or DP plus the SHEP (predecessor to HESPS). No mention is made to the detailed HES policy on microgeneration and, oddly, on more than one occasion the reports of handling state that there were 'no other plans, policies and non-statutory statements that are considered to be of direct relevance.'

Microgeneration projects on listed buildings are not popular in Aberdeen City. The city's development plan policies state that proposals must comply with the SPP and should not affect the setting of a listed building. Only one private application was received and, like all but one of the other applications, it was subsequently withdrawn. Most of the withdrawn applications were for school projects submitted by the council itself and is very little information recorded online about the reasons and policies behind these withdrawals. The one grant of LBC recorded was where the solar panels were part of a school reconstruction following a devastating fire and again very little detail is provided online.

In terms of practice, there are also several instances of significant variation between authorities. First, imposing conditions on a grant is an excellent means of mitigating impacts yet only 62% of grants were subject to conditions relating to the solar panels. Second, conservation officers (or their equivalent and including HES itself) are highly influential when they are consulted which they were in almost half of the 67 decisions studied. The advice given by the conservation officer or equivalent was followed in all but one of these cases. Third, pre-application consultations are often heralded as a way of sorting out difficulties early and increasing the chances of success. Only a quarter of applications were subject to pre-application consultation and of these, over half were still refused or withdrawn. Finally, there is variation in the way authorities record certain decisions, particularly that no LBC is required. Edinburgh records these expressly as no permission required, other authorities record these as withdrawn while it is possible that others simply do not record these decisions at all.

Conclusions

Owners of older buildings are likely to have much to gain from improving the energy efficiency of their buildings and it may be very worthwhile for them to find ways of doing so which protect the historic and architectural significance of the building. Appropriate microgeneration projects such as hidden or disguised solar panels may provide the necessary opportunity to keep the building suitable for active use, comfortable and affordable now and for future generations. Yet, across eight planning authorities only 78 LBC have been granted for solar panels in five and a half years and only 135 applications have been made to do so.

There are several factors contributing to this low take up of solar energy in listed buildings including: the high initial capital cost; the complex planning procedures and lack of permitted development rights; the requirement to have an high energy efficiency rating to qualify for the FIT and finally the presumption in favour of preservation.

It is beyond the scope of this paper to explore the potential reforms to the legal and financial frameworks that would promote a more positive approach to micro-renewables in listed buildings. [82] However, working within the existing system, the study has uncovered several

[82] Ross and Zasinaite, n.38.

areas of policy and practice that would encourage authorities to grant LBC for suitable projects and also potentially increase the number of suitable applications coming forward.

First, the study reveals that there is some very detailed, sensible, clear and useful guidance on microgeneration projects in listed buildings in Scotland – noteably published by HES in their HESMG and by Glasgow and Edinburgh authorities. While LBC decisions are made on a case by case basis, the study found that being able to show that an application is in line with detailed guidance increases the chance of LBC being granted. This detail on microgeneration projects in listed buildings can be included in local development plans or authorities can rely on national policy contained in the HESMG. One proposal in the Scottish Government's recent consultation paper on the future of Scottish planning system is to reduce the size and detail in local development plans, the SPP could better support the planning system by having a stronger statutory status.[83] The benefit of stronger national policy and guidance would be that it would promote consistency across Scotland however, as always, this needs to be balanced against the need to recognize genuine differences in local circumstances. Regardless of whether it is national or local, this detail needs to be widely publicised so owners and developers understand what is acceptable and what is not and feel confident about submitting LBC applications for microgeneration projects.

A second observation is that the different approaches to situations where LBC is held not to be required could be construed as evidence to suggest that different authorities view compliance with detailed policy in different ways. Some authorities may use compliance with the detailed guidance set out in their LDP/SG or in the HES guidance as indicative of instances where LBC is not needed. Others may view compliance as evidence that LBC may be granted. The distinction is often a matter of fact and degree based on the particular facts of the application but it also raises an important legal distinction between when LBC is needed and when LBC should be granted and the potential to use policy to avoid the LBC process altogether. Ideally, any national policy should be explicit about this distinction.

Next, practice can make a difference. Conservation officers and their equivalents are influential in LBC decisions. Many conservation officers offered sensible variations to proposals that were

[83] The Scottish Government Places, people and planning: A consultation on the future of the Scottish planning system 2017 http://www.gov.scot/Resource/0051/00512753.pdf

aimed at balancing energy efficiency appropriately with preservation of historic or architectural features. Authorities should be encouraged to consult conservation officers more regularly and likewise, it is vital that the planners who deal with these, often, small applications and conservation officers alike are regularly trained in new policy, technologies and design. Conditions attached to grants of LBC are an excellent way of mitigating objections and more could be made of these. Finally, while only half of the applications studied that were subject to a pre-application consultation ended up as a successful grant of LBC, there were some excellent examples of early pre-application consultations, where applicants and their agents worked through the objections and sought out alternative technologies, designs and locations with planners and experts such as the Energy Savings Trust.

Sustainable management requires the establishment of boundaries within which change can continue so that it enhances rather than diminishes historic character.[84] Establishing exactly what the boundaries are on a case by case basis can be difficult for authorities and owners of listed buildings under a system that so blatantly favours preservation. However, strong processes and detailed policies can reduce this uncertainty to encourage and deliver creative solutions that sympathetically balance the preservation of the historic environment with modern challenges such as mitigating climate change.

[84] HES n. 10 para 1.3.